

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

DETRICK OLIVER

PLAINTIFF

VS.

CAUSE NO. 3:12CV683DPJ-FKB

**HOLMES COUNTY, HOLMES COUNTY
SHERIFF DEPARTMENT, SHERIFF
WILLIE MARCH (individually and in his
official capacity), DEPUTY SHERIFF
KENNY WILSON (individually and in his
official capacity) AND JOHN DOES 1-5**



DEFENDANTS

NOTICE OF REMOVAL

NOW COME Defendants, Holmes County, Mississippi, Holmes County Sheriff's Department, Sheriff Willie March, individually and in his official capacity, and Deputy Sheriff Kenny Wilson, individually and in his official capacity, by and through their undersigned counsel of record, in the above-captioned litigation filed by Plaintiff, Detrick Oliver, which is currently pending before the Circuit Court of Holmes County, Mississippi, bearing cause number 2012-0247, and file this, their Notice of Removal of the state court action to the United States District Court for the Southern District of Mississippi, Jackson Division. In support thereof, these Defendants would show the Court the following:

1) In support of this Notice of Removal, these Defendants assert jurisdiction pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as the basis for the United States District Court's original jurisdiction over this action, and removal is made pursuant to the provisions of 28 U.S.C. § 1441, *et seq.*

2) Plaintiff's First Amended Complaint was filed in the Circuit Court of Holmes County, Mississippi, bearing civil action number 2012-0247, on August 15, 2012. Pursuant to

L.U. Civ. R. 5(b)(1) & (2), the entire state court record is attached hereto as **Exhibit A**. The First Amended Complaint names as defendants Holmes County, Mississippi, Holmes County Sheriff's Department, Sheriff Willie March, individually and in his official capacity, and Deputy Sheriff Kenny Wilson, individually and in his official capacity.

3) A copy of the summons and First Amended Complaint for Defendants, Holmes County, Mississippi, Holmes County Sheriff's Department, Sheriff Willie March and Deputy Kenny Wilson were served on September 18, 2012. Accordingly, this Notice of Removal is being filed within thirty (30) days of receipt of a copy of the Plaintiff's First Amended Complaint, which sets forth claims for relief upon which the state court proceeding is based as per 28 U.S.C. § 1446.

4) According to 28 U.S.C. § 1441(a), the United States District Court for the Southern District of Mississippi, Jackson Division, is the Federal District Court for the district and division embracing the place where the subject state court suit is pending.

5) This Court has subject matter jurisdiction over the present action pursuant to 28 U.S.C. § 1331 and § 1441. The Plaintiff has made assertions of violations of rights arising under the Constitution of the United States, which create a federal question as contemplated under 28 U.S.C. § 1331, specifically as follows:

a) Paragraph of the First Amended Complaint reads as follows:

This is also a Federal Civil Rights Action brought as a result of a violation of inter alia, the federal, civil, constitutional, and human rights of the Plaintiff. On or about August 7, 2011 (sic) law enforcement personnel inflicted unnecessary bodily harm upon him through the use of excessive unreasonable and unjustifiable force. The act of the Defendants in the use of said force against the Plaintiff and others, enforced pursuant to official policy, is so pervasive as to have the impact of custom and usage. As a direct and proximate consequence the Plaintiff was physically assaulted, sprayed with mace and arrested without jurisdiction. It is alleged that certain Federal Statutes, to include 42 U.S.C. Sections 1983, 1985, and

1986, together with certain rights under the Constitutions of the United States of America and the State of Mississippi were violated. Therefore, the Plaintiff files this action and prays for the result set forth in the following paragraphs.

First Amended Complaint, ¶ 2.

- b) Paragraphs 26 through 33 of the First Amended Complaint are listed under the general heading, **"CLAIMS FOR RELIEF,"** and under the sub-heading **"Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (General Allegations).** *First Amended Complaint*, ¶ 26-33.
- c) Paragraphs 34 through 39 of the First Amended Complaint are listed under the general heading, **"CLAIMS FOR RELIEF,"** and under the sub-heading **"Violation of Civil Rights Pursuant to 42 U.S.C. §1983 (False Arrest).** *First Amended Complaint*, ¶ 34-39.
- d) Paragraphs 40 through 42 of the First Amended Complaint are listed under the general heading, **"CLAIMS FOR RELIEF,"** and under the sub-heading **"Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (Deprivation of Property Without Due Process of Law).** *First Amended Complaint*, ¶ 40-42.
- e) Paragraphs 43 through 46 of the First Amended Complaint are listed under the general heading, **"CLAIMS FOR RELIEF,"** and under the sub-heading **"Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (Failure to Intervene).** *First Amended Complaint*, ¶ 43-46.
- 6) Pursuant to FED. R. CIV. P. 11, the undersigned counsel certifies that he has read the foregoing Notice of Removal and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law and/or good faith argument for the extension, modification, or reversal of existing law, that it is

not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

7) Pursuant to 28 U.S.C. § 1446(d), the Defendants will give written notice of the filing of this Notice of Removal to the Plaintiff, and a true and correct copy of this Notice will be duly filed with the Circuit Court of Holmes County, Mississippi.

WHEREFORE, PREMISES CONSIDERED, Defendants, Holmes County, Mississippi, Holmes County Sheriff's Department, Sheriff Willie March, individually and in his official capacity, and Deputy Sheriff Kenny Wilson, individually and in his official capacity, remove the above-entitled case from the state court to this Court.

RESPECTFULLY SUBMITTED, this 2nd day of October, 2012.

**HOLMES COUNTY, MISSISSIPPI, HOLMES
COUNTY SHERIFF'S DEPARTMENT,
SHERIFF WILLIE MARCH, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY, AND
DEPUTY SHERIFF KENNY WILSON,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY - DEFENDANTS**

BY:



JASON E. DARE

OF COUNSEL:

J. Lawson Hester (MSB No. 2394)
lhester@wyattfirm.com
Jason E. Dare (MSB No. 100973)
jdare@wyattfirm.com
WYATT, TARRANT & COMBS, LLP
Post Office Box 16089
Jackson, Mississippi 39236-6089
Telephone: (601) 987-5300
Facsimile: (601) 987-5353

CERTIFICATE OF SERVICE

I, JASON E. DARE, do hereby certify that I have this day mailed via US Mail, first class, postage prepaid, a true and correct copy of the above and foregoing document to:

Dennis C. Sweet, III, Esq.
Dennis C. Sweet IV, Esq.
Thomas Bellinder, Esq.
Terris Harris, Esq.
SWEET & ASSOCIATES
158 E. Pascagoula St.
Jackson, Mississippi 39201

THIS, the 2nd day of October, 2012.



JASON E. DARE